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## PROTECTION OF WITNESSES ORDINANCE 2005

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*This is a consolidated version of this legislation i.e. it incorporates all amendments made since the legislation was enacted as set out in the table below. It has been produced by the SBAA as an aid to transparency and easier access to SBA law. However, it is not the official version of SBA legislation and, although every effort has been made to check the document, its accuracy cannot be guaranteed. The official version of legislation is published in the SBA Gazette.*

<b>Legislation incorporated in this Consolidation</b>	<b>Ordinance</b>	<b>Date in Force</b>
Protection of Witnesses Ordinance 2005	4/2005	11/02/2005
Human Trafficking & Exploitation Ordinance 2009	25/2009	04/11/2009
Protection of Witnesses (Amendment) Ordinance 2013	32/2013	01/11/2013
Criminal Procedure Ordinance 2016	9/2016	01/05/2016
Criminal Code (Amendment) Ordinance 2019	01/2019	04/02/2019

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P R O T E C T I O N   O F   W I T N E S S E S   O R D I N A N C E   2 0 0 9

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An Ordinance to provide for the Protection of Witnesses and Related Matters

**BE** it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follow:—

**PART 1**

**Introductory Provisions**

**Short Title**

1. This Ordinance may be cited as the Protection of Witnesses Ordinance 2005.

**Interpretation**

2. In this Ordinance—

“a special measures direction” has the meaning given by section 4;

“*child*” means a person under the age of 18; (a)

“live link” means a television link or other arrangement whereby a witness, while absent from the Court room or other place where proceedings are being held, is able to see and hear persons in that court room or other place and to be seen and heard by the persons described in section 6.

**PART 2**

**Witnesses Eligible for Assistance**

**Witnesses eligible for assistance**

3.—(1) A witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this subsection—

- (a) if he is under the age of 18 at the time of the hearing; or
- (b) if the Court considers that the quality of the evidence given by the witness is likely to be diminished by the fact that he is a mental patient or otherwise has a significant impairment of intelligence and social functioning; or
- (c) if he has a physical disability or is suffering from a physical disorder.

(2) A witness in criminal proceedings (other than the accused) is eligible for assistance under this subsection if the Court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

(3) In determining whether a witness falls within subsection (2) above the Court shall take into account in particular the following matters—

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;

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(a) Definition inserted by Ordinance 01/2019 – came into force on 04 February 2019

- (c) such of the following matters as appear to the Court to be relevant—
  - (i) the social and cultural background and ethnic origins of the witness;
  - (ii) the domestic and employment circumstances of the witness;
  - (iii) any religious beliefs or political opinions of the witness;
- (d) the behaviour towards the witness on the part of—
  - (i) the accused;
  - (ii) members of the family or associates of the accused; or
  - (iii) any other person who is likely to be an accused or a witness in the proceedings;
- (e) the views of the witness.

(4) Where the victim of an alleged offence under the Violence In the Family Ordinance 2003 *or the Human Trafficking and Exploitation Ordinance 2009*(a) is a witness in criminal proceedings in respect of that offence, he shall be considered to be a witness requiring assistance in relation to those proceedings by reason of this subsection, unless the witness has informed the Court of his wish not to be so considered.

## PART 3

### Measures for the Protection of Witnesses

#### Special measures directions

4.—(1) A Court may, either on the application of any party to criminal proceedings or of its own motion, order that a witness shall be considered to be a witness eligible for assistance under this Ordinance.

(2) Where a Court orders that a witness is to be considered to be a witness eligible for assistance under this Ordinance, it must then determine whether any special measures available in relation to the witness would, in its opinion, be likely to improve the quality of evidence given by the witness and if it determines that such measures would do so, it shall give a direction (“a special measures direction”) under this section providing for the measures so determined to apply to evidence given by the witness.

(3) Subject to subsection (2) above, a special measures direction has effect from the time that it is made until the conclusion of the trial for the purposes of which it was made unless the Court amends it or revokes it in the interests of justice.

#### Special measures

5.—(1) In the course of any criminal proceedings the Court may, for the purposes of protecting a witness eligible for assistance, direct that—

- (a) all or part of the case be heard in private; and
- (b) the testimony of any witness eligible for assistance or the testimony of any other person whose testimony might be adversely affected if given in the presence of the accused, be given in the absence of the accused, provided that all necessary steps are taken to ensure that the accused has knowledge of the testimony given by the witness and the witness can be cross-examined by the accused or by his legal representative.

(2) Without prejudice to the generality of subsection (1) above the Court may, in particular for the purposes of protecting a witness, order any of the following—

- (a) the use of a screen; or
- (b) the use of a live link; or

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(a) Text inserted by Ordinance 25/2009 – came into force on 04 November 2009

(c) the adoption of any other means or system,

so that the accused and the witness are not visible one to the other.

(3) In order to ensure that the rights of the accused are protected, the Court shall, in such cases as are described in subsections (1) and (2) above, be satisfied that the necessary technological and other arrangements are made and that all the necessary measures are taken so that the accused may follow the procedure audibly and is able to give instructions to his legal representative.

### **Screens**

6. Where a Court includes in a special measures direction that a witness is to be protected by means of a screen from seeing the accused, the screen must not prevent the witness from being able to see, and to be seen by the Court, the legal representatives of the parties and any interpreter or other person appointed to assist the witness.

### **Live link**

7. Where a Court includes in a special measures direction that the evidence of a witness may be given by means of a live link, the witness must, while so giving his evidence, be capable of seeing and hearing any person at the place where the proceedings are taking place and must be visible and audible to such persons as are mentioned in section 6 above.

### **Evidence given in private**

8.—(1) Where a Court includes in a special measures direction that a hearing is to take place in private it may, subject to subsection (2) below, order the exclusion from the place where the hearing is taking place of such persons as the Court may specify.

(2) The Court may not exclude the accused, the personal representatives of the parties or any interpreter or other person appointed to assist a witness.

### **Video recorded evidence in chief**

9.—(1) Subject to the provisions of this section, a special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may not, however, provide for a video recording, or a part of such a recording, to be admitted under this section if the Court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) The Court shall not admit a video recorded interview under subsection (1) above, unless—

- (a) the video recording relates to the case which the Court is trying;
- (b) the witness whose interview is being video recorded is available to be cross-examined if this is requested;
- (c) the video recorded interview is taken in accordance with the rules in section 10 below;
- (d) there is a transcript of the sound recording which accompanies the visual recording of the interview.

### **Rules for video recording interview**

10. The rules for taking a video recorded interview are as follows—

- (a) the name, address, occupation and capacity of the person conducting the interview and of the person operating the recording equipment shall be stated or written before the beginning of the interview;
- (b) the place, date and times at which the recording started and ended shall be included in the recording;

- (c) the name, address and occupation of the person being interviewed shall be stated or written;
- (d) there shall be included in writing a statement by the person conducting the interview to the person being interviewed that the interview is to be video recorded and might be produced in Court in evidence, and a statement by the person being interviewed that he consents to the recording of the interview:

Provided that in the case of a person who is under age such consent shall be given by the person having parental care of the person being interviewed;

- (e) the operator of the video recording equipment shall produce the video tape recording and shall confirm on oath that the recording is an accurate recording of the interview and that nothing has been added or erased to whatsoever was said during the recording and that no other alteration has been made to the recording;
- (f) a copy of the video recorded interview shall be given to the person who was interviewed or, where that person is under age, to the person who had given his consent under the proviso to paragraph (d) above.

### **Admitting video recorded interview**

**11.** When a video recording is admitted under this Ordinance—

- (a) the witness may not give evidence in chief as to any matter which, in the opinion of the Court, has been dealt with adequately in the witness's recorded testimony; and
- (b) the witness shall be available for cross-examination.

### **Recording of cross-examination and re-examination**

**12.—(1)** When a video recorded interview of a witness is admitted as his examination in chief the Court may order—

- (a) that the cross-examination and re-examination of the witness be video recorded; and
- (b) that the video recording of such cross-examination and re-examination be admitted as the testimony of the witness.

(2) A video recording admitted under subsection (1) above shall be made in the presence of such persons as the Court shall order so that—

- (a) the Court and the legal representatives of the parties may see and hear the examination of the witness and may communicate with the persons in whose presence the witness is being cross examined and re-examined; and
- (b) the accused may see and hear the said cross-examination and re-examination and may communicate with his legal representative.

(3) The Court may exclude the video recording of the cross-examination or re-examination of a witness if, in the Court's opinion, the requirements of subsection (2) have not been satisfied.

(4) A witness whose cross-examination or re-examination has been recorded under this section shall not be cross examined or re-examined subsequently to the recording, unless the Court otherwise orders.

(5) The Court may order a subsequent cross-examination or re-examination of a witness whose cross-examination and re-examination has been video recorded if it considers it to be in the interests of justice.

### **Court may exclude part of video recorded testimony**

**13.—(1)** The Court, when considering an application for the admission of a video recorded interview of a witness eligible for assistance, may, if the interests of justice so require, order that specific parts of the recording are not to be admitted in evidence.

(2) The Court, when pursuant to subsection (1) above, is considering whether to exclude part of a recorded interview, shall take into account any possible prejudice to the accused (or to any of them if there is more than one) which may arise from such exclusion, and whether any such prejudice outweighs the benefit of admitting the recorded interview in full.

(3) The Court may order that part of a video recorded interview or part of the transcript of the sound recording be deleted, if it considers that it is not admissible or if it considers that it is necessary to do so in the exercise of its powers under section 9(2).

### **Statement treated as direct oral testimony**

**14.**—(1) Subsections (2), (3) and (4) shall apply to a statement admitted in evidence although it was made otherwise than by way of direct oral testimony in Court by a witness eligible for assistance.

(2) The statement shall be treated as if it had been given by the witness by way of direct oral testimony in Court and accordingly —

- (a) it is admissible as evidence of any fact of which such testimony in Court by the witness would be admissible;
- (b) it is not capable of corroborating any other evidence given by that witness.

(3) Subsection (2) applies to a statement admitted in evidence notwithstanding the fact that it was not made by the witness on oath whereas it would have been required to have been made on oath if made by the witness in direct oral testimony in Court.

(4) In determining the weight to be attached to such a statement, the Court shall have regard to all the circumstances from which an inference can reasonably be drawn.

(5) Nothing in this Ordinance, other than the provisions of subsection (3) above, affects any rule of law relating to evidence in criminal proceedings.

### **Prohibition on disclosing identity**

**15.**—(1) A person shall not publish or in any other way disclose the identity of any person (“the victim”) against whom an offence has been committed contrary to the Violence In the Family Ordinance 2003(a), nor disclose any of the victim’s evidence.

*(1A) A person shall not publish the name, address or any particulars calculated to lead to the identification of a child in respect of whom proceedings under the following Ordinances are taken—*

- (a) the Human Trafficking and Exploitation Ordinance 2009;*
- (b) sections 177A to 177H of the Criminal Code. (b)*

(2) A person shall not publish or in any other way disclose the name or any part of the evidence given by a witness in a case such as is mentioned in subsection (1) above.

(3) A person who contravenes the provisions of subsection (1), (1A) (c) or (2) above is guilty of an offence for which he is liable to a term of imprisonment not exceeding three years or to a fine not exceeding £3,000 or to both such a term of imprisonment and such a fine.

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(a) Ordinance 21/2003

(b) Subsection (1A) inserted by Ordinance 01/2019 – came into force on 04 February 2019

(c) Text inserted by Ordinance 01/2019 – came into force on 04 February 2019

## PART 3A (a)

### *Anonymity of Witnesses*

#### **Witness anonymity orders**

**15A.**—(1) *In criminal proceedings, a court may make an order (a “witness anonymity order”) requiring such specified measures to be taken in relation to a witness (including a proposed witness) in the proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.*

(2) *Without limiting subsection (1), a witness anonymity order may require measures to be taken in relation to a witness for securing 1 or more of the following—*

- (a) *that the witness’s name and other identifying details are—*
  - (i) *withheld;*
  - (ii) *removed from materials disclosed to any party to the proceedings;*
- (b) *that the witness uses a pseudonym;*
- (c) *that the witness is not asked questions of any specified description that might lead to the identification of the witness;*
- (d) *that the witness is screened to any specified extent;*
- (e) *that the witness’s voice is subjected to modulation to any specified extent.*

(3) *Nothing in this section authorises the court to require—*

- (a) *the witness to be screened to such an extent that the witness cannot be seen by the judge;*
- (b) *the witness’s voice to be modulated to such an extent that the witness’s natural voice cannot be heard by the judge.*

(4) *In this section, “specified” means specified in the witness anonymity order.*

#### **Applications for witness anonymity orders**

**15B.**—(1) *An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the accused.*

(2) *Where an application is made by the prosecutor, the prosecutor—*

- (a) *must (unless the court directs otherwise) inform the court of the identity of the witness; but*
- (b) *is not required in connection with the application to disclose to any other party to the proceedings or to the party’s legal representative—*
  - (i) *the identity of the witness; or*
  - (ii) *any information that might enable the witness to be identified.*

(3) *Where an application is made by the accused, the accused—*

- (a) *must inform the court and the prosecutor of the identity of the witness; but*
- (b) *(if there is more than 1 accused) is not required in connection with the application to disclose to any other accused or to the accused’s legal representative—*
  - (i) *the identity of the witness; or*
  - (ii) *any information that might enable the witness to be identified.*

(4) *Accordingly, where the prosecutor or the accused proposes to make an application under this section in respect of a witness, any relevant material disclosed on behalf of that party before the determination of the application may be disclosed in such a way as to*

prevent the following from being disclosed (except as required by subsection (2)(a) or (3)(a))—

- (a) the identity of the witness;
- (b) any information that might enable the witness to be identified.

(5) In subsection (4), “relevant material” means any document or other material that falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

(7) But subsection (6) does not prevent the court hearing 1 or more parties in the absence of an accused and the accused’s legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

### **Conditions for making witness anonymity orders**

**15C.**—(1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make a witness anonymity order only if it is satisfied that Conditions A, B and C are met.

(3) Condition A is that the proposed order is necessary—

- (a) in order to protect the safety of the witness or another person or to prevent any serious damage to property; or
- (b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise).

(4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the accused receiving a fair trial.

(5) Condition C is that the importance of the witness’s testimony is such that in the interests of justice the witness ought to testify and—

- (a) the witness would not testify if the proposed order were not made; or
- (b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

(6) In determining whether the proposed order is necessary for the purpose mentioned in subsection (3)(a), the court must have regard, in particular, to any reasonable fear on the part of the witness that, if the witness were to be identified,—

- (a) the witness or another person would suffer death or injury; or
- (b) there would be serious damage to property.

### **Relevant considerations for making witness anonymity orders**

**15D.**—(1) When deciding whether Conditions A, B and C in section 15C are met in the case of an application for a witness anonymity order, the court must have regard to—

- (a) the considerations mentioned in subsection (2); and
- (b) such other matters as the court considers relevant.

(2) The considerations are—

- (a) the general right of an accused in criminal proceedings to know the identity of a witness in the proceedings;
- (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of the witness’s evidence comes to be assessed;

- (c) *whether the evidence given by the witness might be the sole or decisive evidence implicating the accused;*
- (d) *whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without the witness's identity being disclosed;*
- (e) *whether there is any reason to believe that the witness, having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the accused or any associates of the accused,—*
  - (i) *has a tendency to be dishonest; or*
  - (ii) *has any motive to be dishonest in the circumstances of the case;*
- (f) *whether it would be reasonably practicable to protect the witness by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.*

***Discharge or variation of witness anonymity orders during proceedings***

**15E.**—(1) *A court that has made a witness anonymity order in relation to any criminal proceedings may in those proceedings subsequently discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 15C and 15D that apply to the making of a witness anonymity order.*

(2) *The court may do so—*

- (a) *on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time; or*
- (b) *on its own initiative*

(3) *The court must give every party to the proceedings the opportunity to be heard—*

- (a) *before determining an application made to it under subsection (2);*
- (b) *before discharging or varying the order on its own initiative.*

(4) *But subsection (3) does not prevent the court hearing 1 or more parties to the proceedings in the absence of an accused in the proceedings and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.*

(5) *In this section, "relevant time" means—*

- (a) *the time when the order was made; or*
- (b) *if a previous application has been made under subsection (2), the time when the application (or the last application) was made.*

***Discharge or variation of witness anonymity orders after proceedings***

**15F.**—(1) *This section applies if—*

- (a) *a court has made a witness anonymity order in relation to a witness in criminal proceedings (the "old proceedings"); and*
- (b) *the old proceedings have come to an end.*

(2) *The court that made the order may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—*

- (a) *the provisions of sections 15C and 15D that apply to the making of a witness anonymity order; and*
- (b) *such other matters as the court considers relevant.*

(3) *The court may do so—*

- (a) *on an application made by a party to the old proceedings if there has been a material change of circumstances since the relevant time; or*

(b) on an application made by the witness if there has been a material change of circumstances since the relevant time.

(4) The court may not determine an application made to it under subsection (3) unless, in the case of each of the parties to the old proceedings and the witness,—

(a) it has given the person the opportunity to be heard; or

(b) it is satisfied that it is not reasonably practicable to communicate with the person.

(5) But subsection (4) does not prevent the court hearing 1 or more of the persons mentioned in that subsection in the absence of an accused in the old proceedings and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(6) In this section, "relevant time" means—

(a) the time when the old proceedings came to an end; or

(b) if a previous application has been made under subsection (3), the time when the application (or the last application) was made.

### **Discharge or variation of witness anonymity orders by Senior Judges' Court**

**15G.**—(1) This section applies if—

(a) a court has made a witness anonymity order in relation to a witness in criminal proceedings (the "trial proceedings"); and

(b) an accused in the trial proceedings—

(i) has been convicted;

(ii) has been found not guilty by reason of insanity; or

(iii) has been found to be insane and incapable of following the proceedings.

(2) The Senior Judges' Court may in proceedings on or in connection with an appeal by the accused from the trial proceedings discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—

(a) the provisions of sections 15C and 15D that apply to the making of a witness anonymity order; and

(b) such other matters as the court considers relevant.

(3) The Senior Judges' Court may not discharge or vary the order unless in the case of each party to the trial proceedings—

(a) it has given the person the opportunity to be heard; or

(b) it is satisfied that it is not reasonably practicable to communicate with the person.

(4) But subsection (3) does not prevent the Senior Judges' Court hearing 1 or more of the parties to the trial proceedings in the absence of a person who was an accused in the trial proceedings and the person's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

## PART 4

### Regulations and commencement

#### Criminal Offences

16. The powers of the Administrator ~~under section 176 of the Criminal Procedure Ordinance~~~~(a) to make Rules of Court for the better carrying out of that Ordinance~~ *under section 182 of the Criminal Procedure Ordinance 2016 (rules of court)*~~(b) (c)~~ shall be construed as including a power to make Rules of Court for the better carrying out of this Ordinance.

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(a) Rules of Court Cap 155 (Laws of Cyprus) as amended by Ordinances 4/60, 19/63, 1/66, 2/72, 2/73, 10/75, 4/78, 11/79, 22/87, 4/92, 8/96, 1/97, 22/99, 17/03 and 43/03

(b) Ordinance 9/2016

(c) Text deleted and new text inserted by Ordinance 9/2016 – came into force on 01 May 2016